



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.11.2021
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P. (MD)No.12948 of 2014

G.Rajagopalan

... Petitioner

vs..

1.The Principal Secretary,
Cooperation, Food and Consumer -
Production Department,
Fort St. George,
Chennai - 600 009.

2.The Registrar of Cooperative Societies,
No.170, EVR Periyar Road,
Kilpauk, Chennai - 600 010.

3.The Joint Registrar of Cooperative Societies,
Virudhunagar Region,
Collectorate Campus,
Virudhunagar.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to impugned proceedings of the first respondent vide Letter No.3097/CD1/2011-6 dated 14.03.2013 and quash the same and consequently, direct the first respondent to provide notional promotion to the post of Deputy Registrar of Cooperative Societies from the date on which the petitioner's junior has been promoted and pay the consequential monetary benefit accrued therein.

For Petitioner : Mr.D.Shanmugaraja Sethupathi
For Respondents : Mr.D.Sasikumar,
Additional Government Pleader.

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings dated 14.03.2013 and consequently direct the first respondent to provide notional promotion to the post of Deputy Registrar of Cooperative Societies from the date on which the petitioner's junior has been promoted and pay the consequential monetary benefit accrued therein.

2. The petitioner was appointed as Junior Inspector in the Co-operative Department on 12.03.1979. The petitioner was promoted as Senior Inspector on 15.02.1982 and then, promoted as Co-operative Sub-Registrar on 15.10.1993. The petitioner attained superannuation on 30.04.2012 and the petitioner was allowed to retire from service.



When the petitioner was working as Co-operative Sub-Registrar / Special Officer in the Office of Deputy Registrar of Co-operative Societies, Srivilliputhur, was issued Charge Memo, dated 05.08.2003, under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, on the charges that the petitioner has not taken any action on the irregular appointees and thereby, caused financial loss to the Society. For this, the petitioner was imposed the punishment of stoppage of increment for a period of three months without cumulative effect, vide order, dated 30.06.2004. The appeal filed by the petitioner was dismissed, vide order, dated 26.04.2005 and the second appeal was also dismissed, vide order, dated 23.06.2005.

3. Thereafter, the first respondent, after lapse of three years from the date of second appeal, has remanded the matter back to the third respondent to continue the disciplinary proceedings afresh, from the stage on which the proceedings was vitiated, vide G.O.(D). No.276, dated 08.08.2008. Therefore, the order, dated 30.06.2004, was cancelled and the third respondent initiated the disciplinary proceedings afresh and passed an order with punishment of stoppage of increment for three months without cumulative effect, vide order, dated 30.06.2009. In the meanwhile, the second respondent has prepared panel of Co-operative Sub-Registrar to be promoted as Deputy Registrar for the year 2009-2010. The crucial date for the above panel was on 01.10.2008. Because of currency of punishment for the check period, the petitioner was not granted the promotion. Again, in the year 2010-2011, the petitioner was not included in the panel because of the currency of punishment dated 30.06.2009 and thereby, the promotion of the petitioner was deferred for two consecutive years in 2009-2010 and 2010-2011, citing the charge dated, 05.08.2003 and consequential punishment, dated 30.06.2009.

4. The respondents have filed a counter affidavit stating that the petitioner has not collected an outstanding amount of Rs.23,39,940.70 from three Spinning Mills which was sale of cotton on credit basis. Then the petitioner had not collected the amount of returned cheques bearing a value of Rs.6,00,000/-. The petitioner had not taken legal action against the credit dues and has withdrawn the Court case before the collection of the entire amount. The petitioner had not taken any action against the irregular appointments and several other charges. The respondents relied on the Government Order where the check period has been prescribed.

5. Heard Mr.D.Shanmugaraja Sethupathi, learned Counsel appearing for the petitioner and Mr.D.Sasi Kumar, learned Additional Government Pleader appearing for the respondents.

6. The petitioner relied on the judgment rendered by the Hon'ble Full Bench, in the case of **Deputy Inspector General of Police, Thanjavur Range vs V. Rani**, reported in **2011 (3) CTC 129**, wherein it has been stated that the Government Order was not passed



under the proviso to Article 309 of the Constitution of India and the same cannot have any statutory values. The petitioner has relied on another judgment rendered by the Division Bench of this Court in **G.Rajalakshmi vs Principal Secretary to Government, School Education Department** in **W.A.(MD)No.983 of 2015** and judgment rendered in **M.Jagadeesan vs N.A.Senthilnathan** reported in **[2018] 8 MLJ 1/ [2018] 0 Supreme (Mad) 3440**, wherein has stated check period cannot be put against the delinquent employees.

7. It is seen from the facts of the case that the petitioner was served with two Charge Memo dated, 05.08.2003 and 04.03.2004. For the first Charge Memo, the punishment of stoppage of increment for three months was awarded and for the second charge memo, Censure was awarded. As far as the first Charge Memo is concerned, the punishment of stoppage of increment for 3 months is with effect from 30.06.2004. As far as second Charge Memo is concerned the punishment of Censure was imposed on 21.03.2005.

8. However the order dated 30.06.2004 was set aside and the case was remanded for fresh consideration and the respondents have passed an order on 30.01.2009. Again the petitioner was imposed punishment of stoppage of increment for 3 months without cumulative effect on 30.06.2009. As far as the punishment of Censure is concerned the same was enhanced to stoppage of increment without cumulative effect by suo moto revision under Rule 36 vide order dated 01.04.2010. Again the issue of check period comes in and the petitioner was not eligible for promotion from 2003 onwards until his retirement. Aggrieved over the petitioner has filed this writ petition.

9. In Rani's case this Court, vide order, dated 27.04.2011 has held that "check period" prescribed under government letters are not having statutory force and has set aside the government letters. The amendment to the Rule came into force from 24.02.2014. Since the currency of punishment is prior to the amendment and the check period prescribed under government letters are quashed this Court is of the view that the petitioner is entitled to promotion after the currency of punishment is over.

10. The punishment order for Charge Memo 1, is on 30.06.2004 and charge memo 2 is on 21.05.2005. Since the order based on remand (charge memo 1) and the order modifying the punishment (charge memo 2) was passed on 30.06.2009 and 01.04.2010 respectively, then the petitioner is entitled to promotion prior to the said orders. As on the crucial date of 01.08.2007, there is no currency of punishment and the check period cannot be calculated as per judgment passed in Rani's case, then the petitioner is entitled to promotion as on crucial date of 01.08.2007 and for the panel 2008-2009.

11. Therefore, this Court is of the view that the petitioner is entitled to be included notionally on the crucial date of



01.08.2007. Therefore, the respondents are directed to grant notional promotion for the year 2008-2009 and consequent pensionary benefits shall be granted. The said exercise shall be carried on within a period of 4 weeks.

12. With the above direction, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

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+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-36685[F] dated 01/12/2021)

+1 CC to M/s.SPL GP (SR-36771[F] dated 01/12/2021)

W.P. (MD)No.12948 of 2014
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PS (CO)
KB(23.12.2021) 4P 6C